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**MAILED**  
**DEC 07 2010**  
**OFFICE OF PETITIONS**

In re Patent No. 7,658,987 : DECISION ON REQUEST FOR  
WARBURTON, DON : RECONSIDERATION OF  
Issue Date: February 9, 2010 : PATENT TERM ADJUSTMENT  
Application No. 10/668,537 :  
Filed: September 23, 2003 :  
Attorney Docket No. 14374.106 :

This is a decision on the REPLY TO DISMISSAL OF PATENTEE'S  
REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF  
WYETH filed May 19, 2010.

The request for recalculation is **DISMISSED**.

Patentee is given one (1) month or thirty (30) days, whichever  
is longer, from the mailing date of this decision to respond.  
No extensions of time will be granted under 37 CFR 1.136.

Patentee asserts:

On April 20, 2010, the United States Patent Office mailed  
a dismissal to the Patentee's Request for Recalculation  
of Patent Term Adjustment in view of Wyeth (the  
"Request") for the above referenced case. In particular,  
the Request was deemed ineligible for consideration. The  
Patentee respectfully asserts that the dismissal for  
ineligibility was improper and requests that the Request  
be granted and the patent term adjustment for the above  
referenced case be recalculated in view of Wyeth.

REPLY p. 1.

37 CFR 1.703(b) indicates that the period of adjustment under 37 CFR 1.702(b) ("over three year period") is the number of days, if any, in the period beginning on the day after the date that is three years after the actual filing date of the application and ending on the date a patent was issued. 35 U.S.C.

154(b)(1)(B). However, 37 CFR 1.703(b) also sets forth the limitations on patent term adjustment specified in 35 U.S.C. 154(b)(1)(B)(i) and (ii). Specifically, 37 CFR 1.703(b)(1) provides that the period of adjustment of the term of a patent shall not include the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the B delay period, the over three year period begins on September 24, 2006. The Office notes that the over three year period ends on the day before the RCE was filed February 20, 2006 (prior to September 24, 2006). See 35 U.S.C. 154(b)(1)(B)(i). Therefore, patentee is not entitled to any period of adjustment pursuant to 37 CFR 1.702(b) for failing to issue a patent within three years from the actual filing date of the application. Thus, the request is deemed ineligible for relief pursuant to Wyeth.

Accordingly, the patent term adjustment remains 1010 days.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

*Christina Tartera Donnell*

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